CONSTITUTIONAL ANALYSIS OF RELIGION DHARMA,SECULARISM

'Meaning from ambiguity to actuality: A critical analysis'

ABSTRACT

India that is Bharat is not just piece of geographical land but is one of the oldest civilizations in the world. It finds its existence from a period of more than 4000 years and witnesses the fusion of several customs, traditions which are reflective of the rich culture and heritage of the country. India is known for its unity in diversity or more particularly to mention, India is a country of Diversities. Though according to Sir John Sele, an ancient historian, India is just a museum of diverse languages, religion, castes, customs and traditions and tribes. But in counter Herbert Rezle, Radha Mukund Mukherjee, Ramdhari Singh Dinkar, Jawaharlal Nehru like personalities argues that Unity rests in Diversity. I am of the opinion that though Sir John equated diversity of India with Museum, but no one can deny that he in the other way accepted the truth that India is a country which has 'Unity in Diversity'.

Indian civilization or Indus valley civilization or Indo-Aryan civilization is the oldest civlization in the world - enriched with diversity of culture, traditions, values, faith, beliefs. It is the civlization which has given to the world the most essential mathematical unit 'zero', it is the civlization which has given to the world world's most sacred education not only of how to live life but to also how to succeed in life, through the Vedas being part of the same I am proud off. simultaneously as being a responsible citizen of India, I am obliged that I must give correct, rational information which could sub serve the purpose of being responsible and could uphold the duty towards the society, institutions and the nation. Therefore through the submission I shall put before the world the meaning and difference between the terms 'Religion and Dharma" followed by the judicial approach in the same. I have taken into

account various religious texts, judgements of the Apex Court and discourses of enlightening luminaries.

Key words

Dharma, Religion, Constitution, Judiciary, Secularism

IS RELIGION AND DHARMA SAME

Indeed, we cherish developments of Science and modern world, but what is the sense of such happiness when the comman peoples still believe in superstitions and practices of black magic, here my issue is not superstition or black magic or believe, my issue is with the problems which arise afterwards. When the discourse makers makes themselves settled in the the hearts of comman people and later then the news of commission of offence of rape, murder comes out in public followed which convictions are made by the court, these acts of discourse makers sow the seeds of confusion among the general public and other political conspiracies. Such confusion becomes a political tool for politicians to be called ‘Vote bank’ which they use during the elections and politicise the general public as a ‘Vote bank’. In law there is a maxim that is “Vigilantibus non dormientibus Jura Subveneniunt”, it means that Individuals to not only be aware of their rights under the law, but also to vigilant while exercising there rights.

Today in India the percentage of religious groups in accordance to census 2011 in comparison with that of 2001 is as follows-

Religious Group	Population in Million, 2011	Per cent to Total in 2001	Per cent to Total, 2011	Decadal growth Rate 1991-2001 (%)	Decadal growth Rate 2001-2011 (%)
Hindus	966.2	80.5	79.79	20.0	16.8
Muslim	172.2	13.4	14.22	29.3	24.6
Christians	27.8	2.3	2.29	22.1	15.5
Sikh	20.8	1.9	1.72	16.9	8.4
Buddhist	8.4	0.8	0.69	23.2	6.1
Jain	4.4	0.4	0.36	26.0	5.3
Others*	7.9	0.6	0.65	11.3	19.5
Total	1210.8	100	100	21.5	17.7

* Others do not include religion not stated comprising of 2.86 million in 2011 compared to 0.72 million in 2001.**Source: Census of India 2001; For 2011 Census Data see www.censusindia.gov.in.** [1]

It's not a matter to surprise that almost 25 to 30 percent of the population gets employed in the business of discourses on dharma and religion and make it a family business and source of employment, and rest of the almost 45 percent of the general public becomes blind folded devotee of these imposters. Its time now to stop. It has become more necessary to curb such activities as India is a young nation having 75% of its youth is of the age less than 35 years, it fears me that what will happen if mere half of the percentage of the youth got involved in such practices, **what if still we did not open our eyes, what will happen if we did not tell the youth the difference between faith and superstition, religion and dharma**. My cause of fear is not based on just hypothesis but is based upon real incidents, which I present through a case study

a) BURARI HANGING CASE 2018

In July 2018, eleven members consisting of one old lady named as Narayani Devi, two elder brothers named as -Bhavnesh and Lalit Bhatia, five women of the same family named as Savita, Tina, Priyanka and two young boys named as Dhruv and Shivam. From they were found hanging from the ceiling of their home in Delhi. While there existed no immediate explanation for their deaths but later the investigating officers and forensic experts found 11 notebooks containing incantations and

[1] Census India 2011

instructions for the rituals. Police further found evidence of 'hawan' being performed right before the hangings.

While the initial investigations recorded the case as a murder, further findings established the fact that the plan had been masterminded by Lalit Bhatia who had taken over the role of his father. Later the forensic reports found that the deaths were not suicides but mass death during a ritual.

RESULT

10 innocent family members including two young boys died due to blind folded belief of one man in the family that was Mr.Lalit Bhatia

WHAT IS RELIGION

Rabindranath Tagore once said through his poem-

"Where the mind is without fear

and the head is held high

Where Knowledge is free

Where the world has not been broken up into fragments

By narrow domestic walls

Where the mind is led forward by thee

Into ever widening thought and action

Into the heaven of freedom, my father let my country awake"[2]

I believe that it's time now to bring into reality the observation made by Tagore and get the answer of the above asked question.

SWAMI'S LECTURES

"Freedom, O Freedom! Freedom, O Freedom! Is the song of the soul. It is the man's ceaseless endeavour to become free. The universe itself can never be the limit of our satisfaction. That is why the miser gathers

[2] Shanti Niketan

more and more money that is why the robbers rob, the sinners sin. All have one purpose. There is no other purpose in life then to attain freedom. Consciously or unconsciously, we all are striving for perfection. Every being must attain to it. But the question is 'HOW'[3]

The man who is groping through sin, through misery, the man who is choosing the path through hells, will reach it, but it will take time. ***."The path of virtue, purity, unselfishness, spirituality become known at last to attain freedom is religion"[4].*** Further, St.Paul connotes ***"The path to come that consciousness of the identity is religion"[5]***

Vivekananda further demonstrates his notion of religion through analysing various aspects connected with religion. He is interested in the problem of the origin of religion and feels that two theories regarding the origin of religion have gained acceptance among scholars. One is the Spirit theory of religion and the other is the Super-natural theory of religion. Former says that ancestor worship is the origin of religion, While the later propounds that Nature worship is the beginning[6]. But he finds that there exists a common element in both the theories and that is ***– "the struggle to transcend the limitations of the senses"*** [7].He says **'religion'** is the way to man for going beyond the limitations of the senses[8].

In the present time, we find many sects and societies with almost the same ideas fighting with each other and religion must be studied on a broader basis.

MAHATAMA'S DISCOURSE

"Let me explain what I mean by religion. It is not the Hindu religion…but the religion which transcends Hinduism, which

[3] Works of Swami Vivekananda Vol. 2

[4] Works of Swami Vivekananda Vol. 5

[5] Supra 15

[6] Works of swami Vivekananda Vol.9

[7] Works of swami Vivekananda Vol.3

[8] Works of Swami Vivekananda Vol. 4

changes one's very nature, which binds one indissolubly to the truth within and whichever purifies. It is the permanent element in the human nature which counts no cost too great in order to find full expression and which leaves the soul utterly restless until it has found itself known its maker and appreciated the true correspondence between the maker and itself"[9]

The passage quoted above brings to light the **salient features of Gandhi's view on the nature of religion.** ***Firstly***, it is the 'permanent element of essential goodness'. ***Secondly,*** religion has the character of purifying and elevating one's nature. *Thirdly*, religion has the power of arousing in man a sense of spiritual restlessness means a kind of a thirst which enables the individual to cultivate and develop a sense to the right and the good, and makes him a truly moral man. ***Fourthly,*** it is a cognitive urge to known 'the beyond'. *Fifthly* and finally, religion involves a conscious and sincere love and striving for Truth.

"Surrender to the God's will by subordinating one's body and mind to the call of Truth, self sacrifice, renunciation, love and tolerance etc"[10] is religion.

SOCIOLOGICAL PERSEPECTIVE

Sociologists believe that religion is not a phenomenon of recent emergence. Its beginning is unknown but is a concrete experience which is associated with emotions, especially with fear, awe or reverence. It is a universal phenomenon. According to **Max Muller;** ***"Religion is a mental faculty or disposition which enables man to apprehend the infinite"***[11]

According to MacIver and Page; ***"Religion implies a relationship not merely man and man but also between man and some higher power"***[12]

---

[9] My experiments with truth: An Autobiography

[10] supra 21

[11] Principles of Sociology, C.N Shankar Rao 7th Revised edition

[12] supra 23

According to Durkheim; ***"Unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden"***[13]

BASIC COMPONENTS OF RELIGION[14]

a) Belief in super natural forces
b) Acts, defined as righteous and Sinful or sacred and the profane
c) Some methods of Salvation
d) System of rituals

RELIGION and *ISM*

We live in the 21st century, but still we become a victim of causes dues to ones lack of rational thinking. We live in a confused state of mind and sometimes we a put in such states, reasons may be many. Results of which are sometimes heart breaking and sometimes shocking. Today, its time think rationally.

The word religion is a combination of two words that are 're' and 'legion', where Re means Again and legion means Unifing,bonding with the creature. So etymologically religion means Re Bonding, Reunifying

Ism means philosophy, Darshan, belief. For humans ism lays down numerable principles, philosophies for Re Unify oneself with the god or supernatural and to tell 'the Art of living'. It is to be noted there are prominently 7 isms in India. Those are as follows-

HINDUISM

That is philosophy of Hindus for re-unification with the god. There are numerable principles that has been laid down by the priests like The *Advait Vedanta* of Vivekananda, *Brahma Sutra* by Adi Sankaracharya and ors (or) through *the Upnshidas*, the Vedas, *The Bhagwat Geeta*, The *Nyaya Sutra*, The Kautilaya *Arthashastra*, *Sadhana* by Rabindranath Tagore, *Yoga Sutras* of Patanjali or through the god self as to re-unify and through institutions like, *Braham Kumari, Arya Samaj, Ram Krishna*

[13] supra 23
[14] supra 23

Mission. The objective of the institutions has been to lay down and propagate the principles in consonance with sources, of re-unification with the supernatural.

ISLAM

Philosophy of Muslims for re-unification with the Allah and get ***'Jannat'***, primarily the principles are laid down in the Holy Quran, Hadis of Prophet Mohammad.

BASIC TENETS OF ISLAM

Islam means 'submission to the will of God' and in secular sense Islam means the "establishment of peace." It occurs eight times in Holy Quran in such verses as:

"The (true) religion with God is Islam." [15] "This day have I perfected for you, your religion and completed my favour on you, and chosen for you Islam as a religion"[16]

The Prophet said, ***'Purity of speech and hospitality'. And what is faith? He said patience and beneficence.***[17] A man said**,** ***"O Prophet of God, what is (the mark of) faith"?*** The Prophet said, ***"When thy good work gives thee pleasure, and thy evil work grieves thee, thou art a man of faith"***[18]

CHRISTIANITY

Philosophy of Christians for re-unification with god

BASIC TENETS OF CHRISTIANITY

1) Jesus Christ is the Only Way To Eternal Salvation With God the Father

---

[15] Chapter 3 verse 4

[16] Chapter 2 verse 5

[17] Hadis of Prophet Mohammad, Vol 06

[18] Supra 30

2) no one can earn their way into heaven, no matter how many good works they may try and do for the Lord, and no matter how holy and pleasing they may try to make themselves in His sight.
3) The gift of eternal salvation is a direct free gift being given to all of us by the Lord and it is simply received by grace through our personal faith in Jesus.

"For by grace you have been saved through faith, and that not of yourselves; it is the gift of God, not of works, lest anyone should boast"

4) Once we receive the Holy Spirit into our human spirits at the moment of our conversions to the Lord, another very powerful thing will then happen. Our human spirits will be immediately and instantaneously regenerated by the Holy Spirit

SIKHISM

Philosophy of Sikhs for re-unification with god

BASIC TENETS OF SIKHISM

The 3 Golden Rules of Sikhism originated with Guru Nanak are:

1) **Naam Japna** - Remembering God through meditation all times of day and night during each and every activity.
2) **Kirat Karo** - Earning a livelihood by means of earnest, honest efforts and endeavours
3) **Vand Chakko** - Selflessly serving others, sharing income and resources including foodstuffs or other goods

ZORASTRIANISM

Philosophy of Parsis for re-unification with god. Zoroastrianism is a monotheist religion i.e. belief in one powerful cosmic entity. That entity, in this case, is Ahura Mazda or 'Lord of Light' in Persian

BASIC TENETS OF ZOROASTRIANISM

- **Messianism:** A belief in a ‘messiah’ or saviour who will liberate or save a group of people for eternal salvation
- **Judgement after death**: It is believed that a soul upon departing the earth will be judged by Ahura Mazda for passage to heaven or hell
- **Existence of heaven and hell:** Zoroastrianism elaborates well on the existence of heaven and hell
- **Free will:** A concept that every individual has the ability to choose between different possible courses of actions

So, ism + Practice of the Principles/philosophies = Religion

Thereby, there exists a landmark difference between Ism and Religion. Hence they cannot be combined together. Hinduism is not a religion by a philosophy, Christainity is not a religion but a philosophy, Sikhism is not a religion but a philosophy, Islam is not a religion but a philosophy. Buddhism is not a religion but a philosophy and similar lies with other philosophies. In ***re.Commissioner, Hindu Religious Endowments, Madras vs. Lakshmindra Tritha Swaminar of Sri Shirur Mutt***[19], the Hon’ble Supreme court held*, “*Religion *is a matter of faith with individual or communities and which are regarded by those who proposed that religion is conducive to their spiritual will be but it will not be correct to say that religion is nothing else but the doctrine of believe. A religion May only lay down a code of ethical rules for its followers to accept it might prescribe rituals and observe money is or mores of worship which are regarded is integral part of religion and those forms and observe this my extend even to matters of food and religion is the essential matter of personal face and believe every person has right not only to entertain such religious believe and ideas as may be approved by his judgement or*

[19] AIR 1954 SC 282

conscience but also to exact is believe in ideas by overt act which are sanction by his religion"[20]

It is to be noted that no where and from no where it can be connected that religion has been equated with Dharma. Now the question arises, what is Dharma..?

WHAT IS DHARMA

Dharma word originates from the Sanskrit word '□□□□'. In the contemporary times it has been variously translated as 'religion,' 'law, 'duty 'religious ordinance or rite,' 'code of conduct and so on. But_the word 'Dharma' subjected to intentional translation cannot be translated *perse*. ***'Amarkosha',*** the Sanskrit thesaurus dated to the 4th century AD, provides 8 meanings of Dharma, far beyond translation; the meanings are as follows-

1) **Rupam means colour**
2) **Rusah means taste**
3) **Gandha means smell**
4) **Parimanah means measurement/time**
5) **Sabha means sound**
6) **Buddhi means intelligence**
7) **Adrstam means unforeseen merit or demerit**
8) **Manasikabhavah means mental condition**

Therefore from understanding the meaning the conclusion on which I come is that the said word means the essential principle of the cosmos, the eternal and inherent nature of reality, an aspect of truth or reality not 'duty'.

DHARMA=DHARMA ≠ duty ≠ religion

SECULARISM AND RELIGION

[20] S.P. Mittal Vs Union of India, AIR 1983 SC 1

As understood in the earlier section, the word meaning of religion; that re unification of soul with the supernatural through the principles, practices laid down in ism. Secularism means a state which does not recognize and religion as a state religion. It treats all religions equally- means that state shall recognize all the isms that lay down the way of re-unification with the supernatural and shall not recognize only a religion ism. in other words it means that state has nothing to do with region,ism; its only task is to govern the state by the rule of law. But this does not mean that the state become a closed eye umpire. It means that though the state has no right to regulate any religion or recognize any religion but it has the duty to uphold the rule of law, that means when any region/ism, any practice, breached the law or stands in contravention to the law then the state has the absolute right to control the consequences and may nullify the practice, the ism as state has an obligation and duty to govern the union not by rule of Region but by Rule of Law e.g. Entry of Indian army in Golden Temple. The same Article 25,26 says.

25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus

26. Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(a) to establish and maintain institutions for religious and charitable purposes;
(b) to manage its own affairs in matters of religion;
(c) to own and acquire movable and immovable property; and
(d) to administer such property in accordance with law

Further I am of the firm view that state has also the duty, that if any region/ism been practiced by the society or by the followers of the region and is in contravention to the rule of law. For example Triple Talaq, called as **essential religious practice** by followers of Islam. In this a husband could in a minute give divorce to his wife just by saying 3 times ***'Talaq' Talaq Talaq.*** Further it was observed and took into considerations by the courts that such practice was exercised in petty matters like no sugar in tea then 3 times Talaq in its consequence, no salt in food then 3 times Talaq and several others.

Article 14 to be read with 15 provides that the state shall secure Equality before the law that means every person shall be equal before the law and Article 15 perse, more strengthens the principle of Article 14 by state that, their shall be no discrimination of the basis of religion, sex and other grounds. Now take into note, whether the practice of triple Talaq was in consonance to Article 14 or Article 15, though it might be if, the women were also given the right to exercise the practice; but they could not. In a legal sense the practice created inequality with the women and to the extreme stands in contravention to the principle equality before law thereby the state had the absolute right to control the consequences and nullify the practice, the ism. The state enacted The Muslim Women (Protection of Rights on Marriage) Act, 2019which criminalized triple Talaq

In ***S.R. Bommai vs Union of India***[21], the Hon'ble Supreme Court said ***"Secularism has a positive meaning that id developing, understanding and respect towards other religion".***[22]

[21] 1994 SCC (3) 1

[22] Constituent assembly Debates Vol 4 H.M Seevvai

ESSENTIAL RELIGIOUS PACTICE

CONCEPT AND JUDICIAL INTERPRETATIONS

What is the Genesis of the phrase essential religious practice and answer of shorts is found in the constituent assembly debates while discussing the religious freedom clauses Ambedkar observed

"The religious conceptions in this country are so far that they cover every aspect of life, from birth to death I don't think it is possible to accept a position of that salt we ought to strive hair and after the limit the definition of religion in such a man that we shall not extend beyond believes and such rituals as may be connected with ceremonial which are essentially religious full stop it is not necessary that laws relating to tenancy or loss related to succession should be governed by religion".[23]

In re ***The Commissioner, Hindu Religious Endowments, Madras v Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt***[24]

The Court rejected a suggestion by the Advocate General of Madras which proposed that only "essential" practices of a religion be given constitutional protection, pointing out that *"what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself."*

Recently, Karnataka High Court in its judgement held that wearing the hijab does not constitute an essential religious practice under Islam — which means it can be regulated by the state. To reach this conclusion, the court referred to a commentary on the Quran and held that there is no "Quranic injunction" or mandate on wearing the hijab. It found that "there is sufficient intrinsic material within the scripture itself to support the view that wearing hijab has been only recommendatory, if at all it is".

"It is not that if the alleged practice of wearing Hijab is not adhered to, those not wearing Hijab become the sinners, Islam

[23] ibid 34
[24] 1954 SCR 1005

loses its glory and it ceases to be a religion," the court said, adding that "at the most the practice of wearing this apparel may have something to do with culture but certainly not with religion".

It then asserted that ***"what is not religiously made obligatory therefore cannot be made a quintessential aspect of the religion through public agitations or by the passionate arguments in courts". The court therefore concluded that "wearing of Hijab by Muslim women does not form a part of essential religious practice in Islamic faith***

CONCLUSION

Religion is a matter of faith with individual or communities and which are regarded by those who proposed that religion is conducive to their spiritual will be but it will not be correct to say that religion is nothing else but the doctrine of believe. A religion may only lay down a code of ethical rules for its followers to accept it might prescribe rituals and observe money is or mores of worship which are regarded is integral part of religion and those forms and observe this my extend even to matters of food and religion is the essential matter of personal face and believe every person has right not only to entertain such religious believe and ideas as may be approved by his judgement or conscience but also to exact is believe in ideas by overt act which are sanction by his religion NOT to be equated with dharma.

That an essential practice is to be gathered from the texts and tenets of the religion. The legislature, the Court added, was not permitted to reform a religion out of existence or identity. that that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Article 26. Similarly, even practices though religious may have sprung from merely

superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. The protection must be confined to such religious practices as are an essential and an integral part of it and no other.

Secularism means a state which does not recognize and religion as a state religion. It treats all religions equally- means that state shall recognize all the isms that lay down the way of re-unification with the supernatural and shall not recognize only a religion ism. in other words it means that state has nothing to do with region,ism; its only task is to govern the state by the rule of law. But this does not mean that the state become a closed eye umpire. It means that though the state has no right to regulate any religion or recognize any religion but it has the duty to uphold the rule of law, that means when any region/ism, any practice, breached the law or stands in contravention to the law then the state has the absolute right to control the consequences and may nullify the practice, the ism as state has an obligation and duty to govern the union not by rule of Religion but by the Rule of Law